



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1996

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
111 East 7th Street
LBJ State Office Building
Austin, Texas 78774

OR96-1639

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37328.

The Comptroller of Public Accounts received a request for twenty categories of information for its active and completed limited sales tax audits conducted beginning in 1993 through the present. You say the comptroller will release the requested information for categories one through twelve. You assert that the information in categories thirteen through twenty is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with section 151.027(b) of the Tax Code. The information you seek to withhold includes the hearing number, error codes, audit type-sample/detail, tax total adjustment, whether the taxpayer agrees with the audit result, the audit liability amount, taxpayer contact name, and total tax reported during the audit period.

You inform us that because the requestor asked you to provide the information in an electronic format, you cannot submit the requested information to this office. You have enclosed a list of the various codes mentioned in the request and copies of computer inquiry screens highlighted to show the types of information at issue.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information made confidential by statute. Section 151.027(b) provides confidentiality for information collected under the Limited Sales, Excise, and Use Tax Act and reads as follows:

(b) Information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer, is confidential and not open to public inspection except as provided by Subsection (c) of this section.

We believe this provision prevents the disclosure of information and data "obtained" or "derived" from a taxpayer. *Cf. A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995) (construing section 111.006(a)(2) of Tax Code, which makes confidential information identical to information made confidential by section 157.027(b)). We believe the following information is information "obtained" or "derived" from taxpayers: error codes, total tax adjustment, whether the taxpayer agrees, audit liability amount, and total tax reported. Thus, this information is confidential under section 157.027(b) of the Tax Code. The comptroller must withhold these items from public disclosure. Gov't Code § 552.101.

We do not believe the hearing number or the audit type-sample/detail is information "obtained" or "derived" from the taxpayer. If the source of the information is not the taxpayer, the tax code confidentiality provision does not reach the information. *Cf. A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995).¹ Consequently, the comptroller may not withhold this information from disclosure under section 552.101.

The taxpayer contact name is information "obtained" from the taxpayer. However, we understand this name is obtained before the examination begins. Thus, the name is apparently not "obtained during the course of the examination of a taxpayer's books." We therefore do not believe section 151.027(b) makes the contact name confidential. The comptroller may not withhold the contact name from public disclosure based on section 552.101 of the Government Code.

¹With regard to the release of the hearing number, you explain that the Comptroller normally releases hearing decisions including the hearing number but with redaction of all information that could identify the taxpayer or the taxpayer's business affairs. You are concerned that if the Comptroller "were to provide a particular taxpayer's name associated with a hearing number, the issues raised in the hearing would be identified with the taxpayer. Thus, the business affairs of the taxpayer would be revealed." However, we need not address now the application of section 151.027(b) to a particular hearing decision, since the request here is not for a hearing decision. We note, however, that assuming the requestor here could use a hearing number to connect a certain hearing decision to a particular taxpayer, we would expect the Tax Code confidentiality statute would protect from disclosure the information in the decision about the taxpayer's business affairs. However, the Open Records Act does not permit an inquiry into what the requestor intends to do with disclosed information and the Tax Code does not prohibit the disclosure of information because someone can deduce confidential information from it. *See A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 37328

Enclosures: Submitted documents

cc: Mr. Johnny Gonzalez
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(w/o enclosures)